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Arkansas and National
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**United Country - Birdsong Auction & Real
Estate Group, LLC. & United Country
Northern New Mexico Real Estate**

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Poplar Bluff, MO 63901
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*Auctioneers
Realtors
Valuation
Services*

AUCTION LISTING CONTRACT WITH EXCLUSIVE RIGHT TO SELL

This contract made this day - June 11, 2019 between the following parties

Hereinafter called "Seller" of that certain real property more particularly described in Section A Property Description hereto and incorporated herein by reference, and **United Country-Birdsong Auction & Real Estate Group, LLC.** herein called "BIRDSONG AUCTION".

Section A: Property Description 4.13 +/- Acre Vacant Lot Located @ 107 Red Mountain Court, Lot 23, Mesa Subdivision, Patagonia, Arizona, 85624

1. **STATEMENT OF EMPLOYMENT:** Seller hereby employs BIRDSONG AUCTION to sell the real property and personal property upon the terms and conditions set forth in this contract and grant to BIRDSONG AUCTION the exclusive right to sell the real property during the term of this contract. This contract shall commence when BIRDSONG AUCTION and Seller have signed this contract and shall continue through the terms of said contract.
2. **TIME AND PLACE OF AUCTION SALE:** The auction is to be held on site to be determined by BIRDSONG AUCTION on or

about Online Only Auction Ends July 25th (Tentative)

3. **COMPENSATION OF BIRDSONG AUCTION:**
 - a. BIRDSONG AUCTION shall collect from the
☒ **BUYER** a buyer's premium of 10 % of the sales price as commission on the sale of PROPERTY; with a portion of that being offered to cooperating brokers who produce a successful buyer.

SELLER agrees to pay above-mentioned commission to BIRDSONG AUCTION at closing. It is agreed that BIRDSONG AUCTION may deduct their fees and additional unpaid costs from the total sales proceeds at closing whether the BUYER is secured by the BIRDSONG AUCTION, by the SELLER, at the Auction, or by any other persons or means.

- a. **ADVERTISING ADVANCE:** Seller shall be responsible for said advertising and promotional expenses in the amount not to exceed \$ 2500.00 paid in advance by auction company and the deducted from sale proceeds at closing. An Itemized Budget will be provided. Should the property sell prior to the auction or during this contract period by any means this amount is due to auction company with any unused amount credited back to the seller to be and become due pursuant to the BROKERAGE AMENDMENT described below.
4. **TERMS OF AUCTION SALE AND CONVERSION TO BROKERAGE RELATIONSHIP:** The selling price shall be determined by competitive bidding at the auction sale. **In the event that the auction is a reserve auction and the highest bid received at the auction sale is not acceptable to the SELLER, this contract shall convert to an agreement for brokerage services by and through a sale of the property at private sale or re- scheduled auction.** In such instance, the auction sale date shall be the beginning date for such services and the contract term shall be extended until the 31st day of January 2020 (expiration date). The following terms and conditions shall apply during such period of extension:

- a. SELLER hereby engages BIRDSONG AUCTION to provide brokerage services in cooperation with **John Payne, Licensed Arizona Broker**, through itself or affiliates with respect to the sale of the property described in the contract.
- b. SELLER is not and will not be on the beginning date of the brokerage relationship, a party to any other exclusive representation agreement with respect to the property.
- c. The list price for the Property for such purposes shall be \$ N/A
- d. SELLER authorizes BIRDSONG AUCTION or his representatives, other brokers and their representatives, lenders, appraisers and inspectors to make or allow third parties to make such inspections of the property as are deemed necessary to effectuate the sale of the property. BIRDSONG AUCTION agrees to provide SELLER with reasonable notice of above activity. SELLER authorizes BIRDSONG AUCTION or representatives to release information and findings from such inspections to interested parties. SELLER understands that, regardless of whether inspections are undertaken, SELLER has a legal obligation to disclose to BIRDSONG AUCTION and prospective buyers all adverse material facts of which the SELLER is aware or should be aware which exist upon or affect the property.
- e. If a ready, willing and able Buyer is procured by BIRDSONG AUCTION, SELLER, or any other person during the brokerage relationship term of this contract, then SELLER shall pay to BIRDSONG AUCTION (check one) ☐ \$ N/A OR ☒ 10 % of the selling price, to include compensation to cooperating brokers, as compensation due. Such compensation shall be paid if the property is optioned, sold, conveyed, or otherwise transferred within 180 days of the termination of this contract or any extension thereof (protection period) to anyone to whom BIRDSONG AUCTION has submitted the property during the exclusive right to sell listing period provided BIRDSONG AUCTION has provided a list of prospective buyers, including name and address, in writing. It is understood and agreed that BIRDSONG AUCTION's presentation of an offer during the term of this contract shall constitute notice hereunder with respect to the buyers identified thereon. For purposes of this contract, a prospect or buyer shall be deemed to include any person, or an entity of which such person is a principal, officer, member, manager, member, partner or agent. If a deposit is made on a sale and is then forfeited, one-half of the deposit (not to exceed the compensation to which BIRDSONG AUCTION would have been otherwise entitled to receive) will be paid to or retained (as the case may be) BIRDSONG AUCTION as its compensation due for the services provided hereunder. If an exchange of the property for other property is negotiated by BIRDSONG AUCTION, the same compensation as described above shall be paid.
- f. SELLER (check one) ☐ does ☐ does not direct BIRDSONG AUCTION to disclose the existence of pending offers on the property. In no event are the terms of pending offers to be disclosed.
- g. SELLER (check one) ☐ does ☐ does not consent to BIRDSONG AUCTION disclosing the following motivating factors for the SELLER's proposed sale of the property: _____
- h. If the proposed transaction is a residential transaction or if otherwise required by law, SELLER acknowledges receipt of the Broker Disclosure Form set forth for use by licensees under the _____ Real Estate Commission regarding brokerage relationships on or before the date hereof and on or before BIRDSONG AUCTION's taking any personal or financial information from SELLER, whichever occurred first. SELLER further authorizes BIRDSONG AUCTION to cooperate with other broker's acting as buyer's agents or brokers.
- i. BIRDSONG AUCTION is authorized to advertise the property and place for sale signs thereon.

5. TYPE OF AUCTION:

- a. **Absolute Auction:** Under this agreement, SELLER agrees to sell and complete closing of the sales transaction, regardless of the sales price achieved at auction.
- b. **X** **Reserve Auction:** Under this agreement, SELLER reserves the right to reject the bids offered until the bidding reaches \$ 15,000.00 at which point the BIRDSONG AUCTION is hereby authorized by SELLER to convert and announce that the sale of the PROPERTY shall be absolute. If for any reason Seller chooses not to accept the high bid in excess of the reserve, SELLER will pay to BROKER full commission on the highest bid obtained, any unpaid advertising fees and prepaid expenses. All will be paid in full on auction day.

6. SELLER WARRANTIES:

- a. Seller warrants title to said property, subject only to: (I) zoning ordinances affecting said property, (II) general utility easements serving said property, (III) leases, other easements, (IV) other restrictions as specified in the special stipulations of this contract, and the liens and encumbrances as follows (list each lien holder's name, address and account number, if known: (Write NONE if None and Initial on the right side of

contract) _____.

- b. Seller authorizes that BIRDSONG AUCTION shall request the above lien holder (s) to release information to BIRDSONG AUCTION concerning the above lien (s). Seller agrees to indemnify and hold BIRDSONG AUCTION harmless in the event of any legal action as a result of any undisclosed liens, encumbrances or title defects.
- c. Seller agrees and warrants that he has the ability to satisfy any and/or all mortgages, liens, judgments and any other encumbrances. Seller further agrees to convey to the Purchaser (s) a good merchantable fee simple title by a Special Warranty Deed, free and clear of all liens and encumbrances except those put on or assumed by the Purchaser (s) as part of the purchase price. Seller agrees to hold BIRDSONG AUCTION harmless in the event of Seller's inability to perform.
- d. If Seller is a corporation, limited liability company, partnership, or other form of entity other than an individual, the undersigned as agents of the Seller hereby warrant and guarantee that they are authorized and empowered by the above-named Seller to execute this contract on behalf of the Seller.

7. AUTHORITY OF BIRDSONG AUCTION:

- a. BIRDSONG AUCTION is authorized to sign any memorandum of sale of behalf of and in the name of Seller, or in BIRDSONG AUCTION's own name, in connection with the sale of Seller property.
- b. BIRDSONG AUCTION is authorized to place auction advertising in such media as BIRDSONG AUCTION selects, and provide necessary support, promotional assistance, supplies and materials as the BIRDSONG AUCTION deem necessary to obtain the highest available bid for the property, and to install auction signs on the listed property. BIRDSONG AUCTION shall be held harmless, but not limited to, any error, omission, untimely delivery or damage by U.S. Postal Office, Federal Express, Fax Transmission or any other carrier of the like.
- c. BIRDSONG AUCTION is authorized to accept, give receipt for, and hold all moneys paid or deposited. Deposits will be held in the escrow account of BIRDSONG AUCTION. In the event of any escrow deposit dispute, and the BIRDSONG AUCTION is in doubt as to the disbursement of escrow funds, BIRDSONG AUCTION shall have the right to release the money to a Court of competent jurisdiction, which shall determine the rights of the parties involved in the dispute, but in not case will the action waive the Seller's responsibility of the payment of the BIRDSONG AUCTION's compensation to the BIRDSONG AUCTION.
- d. BIRDSONG AUCTION is authorized, but not obligated, to undertake action on behalf of Seller to enforce any purchaser (s) obligations.
- e. BIRDSONG AUCTION is authorized to place auction advertising in such media as per the attached advertising schedule;
- f. BIRDSONG AUCTION is authorized to direct BUYER(s) to place earnest money deposits with TBD of TBD (ESCROW AGENT).

- 8. DUTIES AND OBLIGATIONS OF BIRDSONG AUCTION:** BIRDSONG AUCTION shall use its best efforts to obtain the highest available bid for said property at the auction sale and submit a written offer in the form of a deposit receipt conforming to the high bid. BIRDSONG AUCTION does not guarantee performance by the high bidder and shall not be responsible if the high bidder shall refuse to submit a written offer conforming to the bidding at the auction sale, nor shall BIRDSONG AUCTION be responsible if the high bidder should fail to perform his agreement to purchase or comply with any memorandum of sale or sales contract that may thereafter be executed.

9. DEFAULT:

- a. If for any reason Seller defaults under the terms of this contract or any memorandum of sale, sales contract or listing contract executed hereunder, the BIRDSONG AUCTION's compensation as defined above and all unpaid advertising and promotional expenses advanced by BIRDSONG AUCTION will be due and payable to BIRDSONG AUCTION on demand calculated at either the minimum listed price, sales memorandum price, or the sales contract price, whichever is applicable.
- b. In the event purchaser (s) defaults under the terms of any memorandum of sale, sales contract or other obligation to purchase the property obtained hereunder, BIRDSONG AUCTION shall receive one half of any and all earnest money forfeited (however, the amount received hereunder by BIRDSONG AUCTION shall not exceed the full amount had the transaction); and Seller shall receive the balance of the said forfeited earnest money.
- c. In the event that purchaser (s) defaults under the terms or obligations pursuant to any bid, memorandum of sale, or sales contract, and in the event that BIRDSONG AUCTION incurs attorneys fees or costs in enforcing the purchaser (s) obligations on behalf of the Seller, Seller hereby agrees to indemnify and hold BIRDSONG AUCTION harmless for any reasonable attorneys fees and costs of Court incurred by BIRDSONG AUCTION. Nothing contained herein obligates BIRDSONG AUCTION to enforce purchaser (s) obligations.

10. **BEST EFFORTS:** BIRDSONG AUCTION shall use its best efforts to obtain the highest available bid for said property at the auction sale and submit a written offer in the form of a deposit receipt conforming to the high bid. BIRDSONG AUCTION does not guarantee performance by the high bidder and shall not be responsible if the high bidder shall refuse to submit a written offer conforming to the bidding at the auction sale, nor shall BIRDSONG AUCTION be responsible if the high bidder should fail to perform his agreement to purchase or comply with any memorandum of sale or sales contract that may thereafter be executed.
11. **CHANGES TO CONTRACT:** This contract can only be changed, modified, or amended by a written instrument signed by the parties
12. **INQUIRIES:** Seller agrees to refer to the BIRDSONG AUCTION all inquiries from Brokers or others interested in Seller's property. Seller gives BIRDSONG AUCTION the sole and exclusive control of sale of Seller's property from this date, and further binds himself not to interfere in the sale of the property during the term of this contract, and any extensions hereof.
13. **CONDITIONS OF THE PREMISES:** The property is to be sold "as is, where is", with the Seller and the BIRDSONG AUCTION making no guarantees as to the condition of the property. Seller shall completely disclose the known true state of affairs with respect to the condition of the property and Seller authorizes BIRDSONG AUCTION to disclose this condition to prospective purchasers. **Seller is a Trustee and HAS NOT OCCUPIED THE PREMISES SO THEREFORE HAS NO KNOWLEDGE OF SPECIFIC PROPERTY CONDITIONS.**
- a. **DISCLAIMER:** SELLER AND PURCHASER ACKNOWLEDGE that they have not relied upon any advice or representations of any real estate agent or auctioneer involved in this sale relative to : (i) the legal or tax consequences of this contract and the sale, purchase or ownership of the property, (ii) the structural condition of the property, including the condition of the roof and basement, termite and/or wood infestations, (iii) electrical, heating, air conditioning, plumbing, sewer systems, water heating systems, and appliances, (iv) the age and square footage/acreage of the improvements, and the size of area, forwillingness to sell or purchase the property on terms and price herein set forth. Seller and purchaser acknowledge that if such matters are of concern to them in the decision to sell or purchase the property, the have sought and obtained independents advise relative thereto.

Special Conditions: If Property should not sell at initial auction, property automatically converts to either a traditional listing or will be re- listed as an reserve auction subject to net expenses of the trustees, advisors and auction company.

14. **LIMITATION OF LIABILITY:** BIRDSONG AUCTION shall not be responsible for any damages, expenses, or other losses occurring by the high bidder at any auction sale refusing to submit or sign a written offer, contract, or memorandum of sale confirming his bid or refusing to perform on his agreement to purchase; and BIRDSONG AUCTION shall not be required to enforce any such obligations on behalf of the Seller. BIRDSONG AUCTION does not guarantee the sale of the property, but BIRDSONG AUCTION will make a sincere and honest effort to procure a sale for the Seller's described property. In consideration of the efforts and expenditures by the BIRDSONG AUCTION, Seller shall indemnify the BIRDSONG AUCTION against all liability, loss and expenses, including reasonable attorneys fees and Court costs that the BIRDSONG AUCTION may incur as a result of any claim or suit against the BIRDSONG AUCTION by any person from personal injury or property damage sustained by such person while on or about the herein above described premises, due to the condition of said premises of Seller's negligence.
15. **EXTENSIONS:** If as sale, lease or other transfer of said property is made within 180 days after the exclusive time period in paragraph 5 after auction, Seller agrees to continue the listing with BIRDSONG AUCTION and agrees to pay the commission in full hereinafter set forth to BIRDSONG AUCTION. As to the parties with whom the BIRDSONG AUCTION negotiated, registered or was in contact with any form during the terms hereof, or an extension hereof, then Seller further agrees to pay the commission in full hereinafter set forth to BIRDSONG AUCTION.
16. **ADDITIONAL TERMS:**
17. **SELLER'S CLOSING COSTS:** Unless otherwise stated, title insurance will be provided by the seller and closing costs will be split equally (50/50) between purchaser and seller. with exception to any additional financing fees/requirements acquired by purchaser.

Exceptions:

Purchaser will receive a **Special Warranty Deed** unless otherwise stated. TAXES SHALL BE PRORATED as the date of the closing of this sale unless stated otherwise.

18. **MISCELLANEOUS:**

- a. The parties to this contract expressly agree that the laws of the **United States Federal Bankruptcy Court, District of New Mexico**, shall govern the validity, construction, interpretation, and effect of this contract.
- b. This writing constitutes the entire agreement between the parties and no modifications or change in this contract shall be valid or binding upon the parties involved, unless it is in writing and executed by the parties.
- c. **Auctioneer/ Broker acts as agent for the Seller.**



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and National Auctioneers
Association
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**United Country – Birdsong Auction & Real
Estate Group, LLC.**

Travis Birdsong

3069 N. Westwood Blvd, Ste B.

Poplar Bluff, MO 63954

Telephone: (573)727-9656

www.birdsongauction.com

*Auctioneers
Realtors
Appraisers*


In witness whereof, the parties have executed this contract on the day and year first above written.

SELLER: Seller's Name: _____
 Address: _____
 City: _____
 State/Zip: _____
 Telephone Numbers: _____
 Signature: _____

SELLER: Seller's Name: _____
 Address: _____
 City: _____
 State/Zip: _____
 Telephone Numbers: _____
 Signature: _____

SELLER: Seller's Name: _____
 Address: _____
 City: _____
 State/Zip: _____
 Telephone Numbers: _____
 Signature: _____

United Country - Birdsong Auction & Real Estate Group, LLC.

By: Officer's Name/Title:  Auctioneer/Broker

BIRDSONG AUCTION: _____

FIRM LICENSE # Missouri MO-2003019310
 Arkansas AR-PB00057994

IN COOPERATION WITH
JOHN PAYNE- AZ Broker License # BR52735500 _____
United Country -Arizona Auction & Property

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

THOMAS JOSEPH BROPHY, JR., and
VIRGINIA RUTH BROPHY,

Case No. 17-10337-j7
Chapter 7

Debtor.

**DISCLOSURE OF UNITED COUNTRY-BIRDSONG AUCTION & REAL ESTATE
GROUP, LLC AND UNITED COUNTRY NORTHERN NEW MEXICO REAL ESTATE
(TRAVIS BIRDSONG) PURSUANT TO BANKRUPTCY RULE 2014**

United Country-Birdsong Auction & Real Estate Group, LLC d/b/a United Country Birdsong Auction & Real Estate Group, LLC and United Country Northern New Mexico Real Estate (Travis Birdsong) (together, “**Birdsong**”), in connection with the *Chapter 7 Trustee's Application To (I) Employ United Country-Birdsong Auction & Real Estate Group, LLC (Travis Birdsong, Broker/Auctioneer) and United Country-Arizona Auction & Property (John Payne, Broker); and (II) Motion to Sell Real Property at Auction*, states:

1. To the best of the undersigned's knowledge, information, and belief, after making reasonable inquiry Birdsong has no connection with the Trustee, the Debtors, the Debtors' creditors, or any other party in interest in this case, or their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, other than that (i) Birdsong or its employees may subscribe to telephone and other utility services, and may purchase other goods and/or services from vendors of the Debtors and (ii) Birdsong has worked with Trustee's attorneys in auctioning properties in unrelated bankruptcy cases.

2. The terms and arrangement for employing and compensating Birdsong, if the Court approves the Trustee's employment of Birdsong as the auctioneer in this case, is

summarized as follows:

Birdsong will sell the subject property with the cooperation of United Country-Arizona Auction & Property (John Payne) ("**Arizona Auction**"). As compensation for their services, they will charge the buyer at the auction a ten percent (10%) buyer's premium of the purchase price of the property. The buyer's premium would be split such that Birdsong would receive 40% and Arizona Auction would receive 60%. Furthermore, Birdsong and Arizona Auction may expend and charge to the Trustee's auction proceeds an amount not to exceed \$2,500.00 for advertising and promotional expenses for the auction of the Property.

3. Within one year prior to the commencement of this bankruptcy case, the Trustee has not paid Birdsong any amounts in connection with this case.

4. Birdsong has not shared or agreed to share with any other person or entity, other than with members or regular associates or employees of Birdsong, any compensation paid or to be paid by the Trustee in or in connection with this bankruptcy case, other than a 2% commission split to a cooperating licensed broker which produces a winning bidder, as further set forth in the employment application.

The undersigned verifies under penalty of perjury that the above is true and correct.

United Country-Birdsong Auction & Real Estate
Group, LLC and United Country Northern New
Mexico Real Estate

By: 

Travis Birdsong

3010 S. Hwy. 84

P.O. Box 245

Chama, NM 87520

Proposed Auctioneers for Trustee

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

THOMAS JOSEPH BROPHY, JR., and
VIRGINIA RUTH BROPHY,

Case No. 17-10337-j7
Chapter 7

Debtor.

**DISCLOSURE OF UNITED COUNTRY-ARIZONA AUCTION & PROPERTY (JOHN
PAYNE) PURSUANT TO BANKRUPTCY RULE 2014**

United Country-Arizona Auction & Property (John Payne) (together, “**Arizona Auction**”), in connection with the *Chapter 7 Trustee’s Application To (I) Employ United Country-Birdsong Auction & Real Estate Group, LLC (Travis Birdsong, Broker/Auctioneer) and United Country-Arizona Auction & Property (John Payne, Broker); and (II) Motion to Sell Real Property at Auction*, states:

1. To the best of the undersigned’s knowledge, information, and belief, after making reasonable inquiry, Arizona Auction has no connection with the Trustee, the Debtors, the Debtors’ creditors, or any other party in interest in this case, or their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, other than that Arizona Auction or its employees may subscribe to telephone and other utility services, and may purchase other goods and/or services from vendors of the Debtors.

2. The terms and arrangement for employing and compensating Arizona Auction, if the Court approves the Trustee’s employment of Birdsong as the auctioneer in this case, is summarized as follows:

Birdsong will sell the subject property with the cooperation of United Country-Arizona Auction & Property (John Payne) (“**Arizona Auction**”). As compensation for their services, they will charge the buyer at the auction a ten

percent (10%) buyer's premium of the purchase price of the property. The buyer's premium would be split such that Birdsong would receive 40% and Arizona Auction would receive 60%. Furthermore, Birdsong and Arizona Auction may expend and charge to the Trustee's auction proceeds an amount not to exceed \$2,500.00 for advertising and promotional expenses for the auction of the Property.

3. Within one year prior to the commencement of this bankruptcy case, the Trustee has not paid Birdsong any amounts in connection with this case.

4. Birdsong has not shared or agreed to share with any other person or entity, other than with members or regular associates or employees of Birdsong, any compensation paid or to be paid by the Trustee in or in connection with this bankruptcy case, other than a 2% commission split to a cooperating licensed broker which produces a winning bidder, as further set forth in the employment application.

The undersigned verifies under penalty of perjury that the above is true and correct.

United Country- Arizona Auction & Property

By: _____

John Payne

2479 S. Higley Rd. Ste 104-120

Gilbert, AZ 85295

Proposed Auctioneers for Trustee